

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

S W D- Land Acquisition - Suits - Kadapa District - Proddatur, M, Modameedipalli (V), an extent of Ac.2.49 in Sy.No.534/5, 534/6, and 534/7 acquired for providing house sites to Adi Andhra Christian families - Orders of H.C Dated 25.3.2009 in WP No.25139/2004 - Cancellation of Govt Memo.No.22691/C2/96-2, SW (LA) Dept, dated 27.12.1996 - Orders - Issued.

SOCIAL WELFARE (LA.2) DEPARTMENT

G.O Rt.No. 23

Dated 20.3.2010

Read the following

Read:

1. Govt.Memo.No.9685/C2/93-4 SW Dept., dt:10.9.1993.
2. Govt.Memo.No.22691/C2/96-2 SW Dept., dt:27.12.1997.
3. Govt.Memo.No.13337/L.A.2/97-2 S.W Dept., dt:19.3.1998.
4. Orders of A.P. H.C. in W.P.No.17363/97 dt.13.7.1997.
5. Govt. U.O.Note No.5173/L.A.2/98-2 Dt.18-3-1998.
6. From the Collector, Cuddapah Ref No.D3/8558/88 dt : 23-6-1998.
7. Rep. of Sri. K.S.Mahboob Basha, Proddatur Dt.2-7-1998.
8. From the Collector Cuddapah Ref No.D3/8558/88 dt.16-7-1998.
9. Govt. Memo 9737/L.A.1/98 SW(LA) Dept., , dt:12/10/2000.
10. Order of H.C in C.A.,NO.6/2001 & LAP.No.306/2001. Dt 31/10/2003.
11. Orders of High Court dated 25-3-2009 in W.P.No.25139/2004.
12. Show Cause Notice No.9734/LA(2)/1998 SW Dept dated 28.7.2009
13. From the District Collector, Kadapa Lr.Rc.NO.G3/8559/1998 dated 29.8.2009 and 24.9.2009.

O R D E R:

The case pertains to reconveyance of the land to an extent of Ac.2.49 acres in Sy.No.534/5, 534/6 and 534/7 situated in Modameedipalli village, Proddatur Manadal, Kadapa District acquired under Land Acquisition Act, to the owner/ legal heir of the land. The brief facts of the case are as follows:

- I) The District Social Welfare Officer, Kadapa has passed award No.1/76-77 dt 23-10-1976 in acquisition of Ac.2.49 cents of land of Sri K.Syed Khader and possession was taken on 10.1.1977 for house sites to Adi Andhra Christians as has been reported by the M.R.O. Proddatur in D.O.Lr.No.E/999/88 dt.27.12.1993.
- II) The petitioner's father filed W.P.No.104/77, before, the Hon'ble High Court for quashing L.A. Proceedings. The same Writ Petition was dismissed vide judgement dt 18-6-1978. He has also filed W.A.No.268/78 in WP.NO.104/77 and the same also was dismissed by the Hon'ble High Court vide the judgement dt 14-8-1985.

2. The applicant Sri K.S.Mahboob Basha filed petition dt 23.10.1990 stating that he has filed WP.NO.6115/88 before High Court for de-notifying the land in question from acquisition and the writ petition was disposed off on 20.4.1990 by the Hon'ble High Court with a direction that the learned council for petitioner says that there is alternative land available. His client may be permitted to make representations to the authorities to denotify the land. It is stated to mention that it is always open, that the petitioner to make representations to take appropriate action in the matter to the Revenue Authority. The present petitioner Sri K.S.Mahaboob Basha has filed petition to the secretary to Government Revenue(LA) department and the letter of the District Collector, Kadapa addressed to the Secretary to Government, Revenue Department and copy marked to Secretary to Government, S.W. Department.

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3. Based on the parawise remarks of the Dist. Collector, Kadapa dated 23.4.1993, the Government have rejected the request of the petitioner vide Government Memo.No.9685/02/93-4, dated 10-9-1993 and Government Memo No.1753/C2/94-1, dated 28.6.94. The Government have further examined the report of the District Collector, Cuddapah vide Letter No.D3/8558/88, dated 24-03-1993 and observed that the land acquired was not distributed to anybody for the last 20 years and compensation amount was also not received by the awardee and the land was being enjoyed by the petitioner Sri K.S.Mahaboob Basha and as per the A.P. Municipal Act, 1965 the land is located in an industrial area and this land cannot be assigned for House sites. Further observed that as clarified by the MRO Proddutur, the petitioner is a small farmer. Therefore, the Government considered that there was only one alternative to re-conveyance of the acquired land to the petitioner. Therefore ordered for re-coveyance of the land admeasuring Ac. 2.49 acres acquired on 10-1-1977 in Sy.No.534/5,534/6 and 534/7 in Proddutur town to the legatee of the owner of the land(late) Sri.K.Syed Khadar as determined by the Sub-Judge, Proddutur in OP.NO.25/93 dt 23.12.1994 vide Government Memo No.22691/C2/96-2, dt 27-12-1996 Social Welfare (C2) Department.

4. In view of the above facts, it is surprising to note that the acquired land were not utilized by way of distributing the patta certificates to the beneficiaries for house sites purpose since last 20 years and the land is located in industrial area and such land need not be assigned for distribution of house sites pattas, there was a case to examine the acquired land for disposal which is no longer required for public purpose for which it was acquired as per Para 32 of B.S.O. 90. But the order vide Government Memo.No 22691/C2/96-2 dated 27.12.1996 referred to above was issued without indicating any provision of law under which the decision of re-conveying the land acquired was taken by the Government.

5. As the matter of fact there is no provision by which the land statutorily vested in Government reverts to the owner. But there is a provision as per B.S.O.90 Para 32 for disposal of the land which became not required for public purpose for which it was acquired and this B.S.O. provision was in full force upto the date of issue of Government Memo.No.22691/C2/96-2, dt 27-12-96 for disposal of the land to the owner/legal heirs and also in public auction. However, the Government have amended Para 32 of B.S.O.90 vide Go.Ms.No.783, Revenue(LA)Department dt9.10.1998. According to which the land acquired, in case not required for the purpose for which it was acquired due to any reason shall be utilized for any other public purpose as deemed fit, including aforestation. Therefore, this amendment was not there in the year 1996, when the Government have issued re-conveyance orders. Therefore, the alternative was only to cause disposal of the acquired land which is no longer required for public purpose under Para 32 of B.S.O.90.

6. When para.32 of B.S.O.90 is looked into, the procedure has been indicated to be followed for disposal of the land at proviso(i)(ii)(iii) and (iv) of sub-para.32 of B.S.O.90. According to this procedure, even if the Government was willing to take a decision to re-convey the land to the legal heir of the owner, the Government, would have taken action directing the Collector to dispose of the land duly following the procedure indicated in proviso(iv) of sub-para.2 of para.32 of B.S.O.90. and as per powers vested with the District Collector as per proviso(iv) of sub-para 2 of B.S.O.90. According to the procedure in this para the land should be offered first at the cost price to the parties to whom the proprietary right and the right of occupancy in the land originally belonged or through their heirs. If their claim is found not exceeding 12 years.

7. Therefore the above rule position though applicable to the owner or legal heir in this instant case, the claim of the owner/Legal heir was not within 12 years period since the present petitioner Sri K.S.Mahaboob Basha has filed petition before the Secretary to Government, Revenue (L.A) Department on 23-10-1990 after expiry of 12 years period. Here it pertinent to point-out that he was determined as legatee of the owner of the land by the Sub-judge, Proddutur vide order in OP.No.25/93, dt 23.12.94. in this way also the present petitioner Sri K.S.Mahaboob Basha became legatee after expiry of 12 years from

the date of acquisition of land. So he was not eligible to avail B.S.O.90 para32 and claim for disposal of land in his favour as legal heir. While the above was the legal position, the Government instead of rejecting the application filed by the present petitioner Sri K.S. Mahaboob Basha on 23.10.1990, the Government have issued orders vide Memo.No.22691/C2/96-2, dt 27.12.1996 reconveying the land in favour of the legatee Sri.K.S.Mahaboob Basha. Here, it is also pertinent to notice that the Collector, Cuddapah vide his letter No.D3/8558/88, dt.16.8.1997 reported that the Government have agreed for change of land use from Light industrial use to Residential use the extent of Ac.2.49 cents in Sy.No 534/5, 534/6, and 534/7 vide Memo.No.32831/H/95-2, M.A. dt 22.4.1996 with instructions to the Director of town and country Planning, Hyderabad to furnish Draft variation and Schedule of Boundaries for taking further action in the matter, and the proposals were submitted by the Municipal Commissioner, Proddutur to the Government vide his letter Roc.No.492/94-G2, dt 29-8-1996.

8. While the position stands thus, Sri K.S.Mahaboob Basha, legal heir of the deceased pattadar (Sri K.Syed Khader) filed WP.NO.11289/96 before the A.P.High Court requesting for re-conveyance of the land acquired. The Hon'ble High Court has opined that it would be a futile exercise if any direction is given to the respondents to reconsider the petitioner's case, as it was previously rejected by the Supreme Court. However, the High Court viewed that the respondents should not be precluded from considering the petitioner's application on merits. On filing petition by the petitioner, the Government in Social Welfare Department have issued orders for re-conveyance vide Memo.No.22691/C2/96-2, dt 27.12.96 to the legatee of the owner of the land as determined by the Sub judge, Proddutur in O.P.No.25/93 dated 20.4.1994 and issued instructions for taking necessary action. The District Collector, Cuddapah has opined in his report that the land is situated by the side of Proddatur-Mydukur Road which is in the heart of the Proddutur Town highly developed and thickly populated area, land value is being increased in leaps and bounds, the total land acquired was about Rs.42,953-00 whereas the value at this stage could not less than Rs.1.5 crores, if the Government Memo. implemented it would be to a loss of Rs.1.5 Crores to the Government apart from a further loss in Non-monetary terms would be very high. Therefore this municipal town land would be very useful not only for the public purpose, but also construction of public buildings. In view of the above circumstances the District Collector, Cuddapah has requested the Government for reconsideration of Government Memo dated 27.12.1996 issued for re-conveyance of the land in the interest of the Government.

9. Since there was a WP No.17363/97 filed by the petitioner for implementation of the reconveyance orders used in Govt.Memo No.22691/C2/96-2, dated 27.12.1996 and the court passed orders on 30.7.1997 with a direction to the District Collector for implementation of Government Orders issued in Memo No.22691C2/96-2, dated 27.12.1996, the Government have directed the District Collector Cuddapah vide Govt. Memo.No.133337/LA.II/97-2, dated 19.3.1998 to implement the orders of AP High Court and report to Govt.

10. The Government re-examined the issue of reconveyance and filed Review WP.MP.No.34374/99 in WP.No.17363/97 stating that the land was acquired long back and the Land Acquisition proceedings challenged by the petitioner were proved unsuccessful at all levels and the Government have passed orders in Memo.No.22691/C2/96-2, dated 27.12.1996 reconveying the land in favour of the petitioner without realising that it could be used the same for some other public purpose, though for the purpose for which it was acquired was not required and the Government now realized the mistake, it is contemplating to review its own order issued in Memo No.22691/C2/96-2, dated 27.12.1996 and also stating that it is always open to the Government to utilise the acquired land in the interest of the public requirement and as such reconveyance of the land acquired by the Government is not permissible and prayed that the Hon'ble High Court for according permission to cancel the Govt Memo No.22691/C2/96-2, dated 27.12.1996. The review petition was dismissed by the Hon'ble High Court in its order dated 16/12/99.

11. The Hon'ble Judge on the Review Petition filed by the Government observed in his orders dated 16.12.1999 that there appears no error in the order passed by Hon'ble High Court and the parameters applicable for reviewing earlier order are very limited. Grounds urged by the Government would not fall within the reviewable grounds by the High Court and concluded in the order that the High Court is not inclined to express any opinion on this aspect or reconsideration, be that as it may, there is no any ground to review the orders of High Court and dismissed the review petition.

12. In view of the above orders of Hon'ble High Court, on the Review Petition filed by the Government, the Hon'ble High Court has not expressed any opinion on the aspect of reconsideration of Government order in Memo No.22691/96-2, dated 27.12.1996 and stated "be that as it may" therefore there is a case for the Government to exercise inherent powers vested in them to review their own order issued vide Government Memo.No.22691/C2/96-2, dated 27.12.1996 as it was issued under mistake of fact and without following procedure laid down in para.32 of B.S.O.90 which is relevant for disposal of the land which is no longer required for the public purpose for which it was acquired.

13. The Govt. have decided to exercise the inherent powers vested in Government and orders were issued vide Memo.No.9734/L.A.II/98, SW Dept., dated 12/10/2000, canceling the orders of re conveyance passed by the Govt. vide Memo.No.22691/C2/96-2 dt 27-12-1996 with immediate effect..

14. The petitioner Sri. K. S. Mahboob Basha has filed a contempt case No.1300/98 to implement the orders in W.P.No.17363/97, where the court disposed off the case in its order dated 2/2/2001 with a direction "that the respondents shall implement the orders of the court dated 30/7/97 without reference to the subsequent proceedings issued by the Govt Memo No.9734/LA.II/98 dt 12/10/2000. this exercise shall be done within a period of two months from the date of this order.

15. The Govt. have filled CA & LAP against the orders of APHC in CC.NO.1300/98. the Division bench has granted interim stay against the orders of the CC.No.1300/98, Subsequently allowed the CA filed by the Govt. and set aside the orders of in single judge dated 2/2/2001 and upheld the orders of the Government Dated 12/10/2000. The petitioner Sri K.S. Mahaboob Basha, filed a WP.No.25139/04 before High Court to direct the respondent not to dispossessed the petitioner from the land and set aside the govt. Memo dated 12.10.2000.

16. The Hon'ble High Court has disposed the WP.No.25139/2004 filed by Sri. K.S. Mahaboob Basha, in its orders dated 25.3.2009 with the following directions:-

"On the afore said analysis, the impugned memo dated 12.10.2000 is set aside on the short ground that it was issued without notice and opportunity to the petitioner. It is reiterated that there is no obligation on the State to reconvey the property to the petitioner in view of the decision of the Supreme Court (1st supra) nor is the petitioner entitled, by application of the principles of estoppels, to re conveyance of the property on the basis of the earlier memo dated 27-12-1996. It is also declared that the State has the power authority and competence to revisit the earlier administrative decision contained in the memo dated 27-12-1996 by the issuance of a fresh order for cancellation of the same if the circumstances so warrant, but after affording the petitioner an opportunity of representation, considering the same and passing a reasoned order thereon. The respondents may now issue a notice to the petitioner within one month from the date of receipt of a copy of this order and after receiving any representation from the petitioner with in the time stipulated on such notice, the respondents shall take an appropriate decision in accordance with law and pass an order recording reasons for the same, expeditiously thereafter and shall communicate the decision to the petitioner by registered post with acknowledgement due. The WP is allowed to the extent indicated above. There shall no order as to costs".

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17. Pursuant to the judgment of the High Court in W.P.No.25139/2004 dt 25.3.2009 a show cause notice was issued to Sri K.S.Mahaboob Basha, Proddatur as to why the Govt. Memo.No.22691/C2/96-2, S.W Dept., Dated 27-12-1996 could not be cancelled vide show cause Notice No.97341/LA.2/1998 S.W Dept Dated 28-7-2009 and the individual is directed to submit his explanation within two weeks. The show cause notice was served on the individual on 27-8-2009. but no reply has been received from the individual as on date of issue of this order.

18. In the circumstances stated above and after careful re-examination of the entire matter, and in exercise of the inherent powers vested with the Government hereby cancel the orders issued in Government Memo.No.22691/C2/96-2, SW Dept dated 27.12.1996.

19. The District Collector, Kadapa shall take necessary further action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

V. NAGI REDDY
PRINCIPAL SECRETARY TO GOVERNMENT

To
Sri K.S Mahboob Basha,
Mydakur Road, Proddatur, Kadapa District (By Regd Post with Ack Due)
The District Collector, Kadapa (With a request to serve the order copy and obtain Acknowledgement)
The Commissioner of Social Welfare, Hyderabad., A.P., Hyderabad
Copy to the CCLA, AP., Hyderabad.

//FORWARDED :: BY ORDER//

SECTION OFFICER